

Before the  
Federal Communications Commission  
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the matter of )  
 )  
Usage of the Public Switched )  
Network by Information Service )  
and Internet Access Providers )

CC Docket No. 96-263

Comments of the Alliance for Public Technology

The Alliance for Public Technology (APT),<sup>1</sup> a consumer coalition of 107 public interest organizations and more than 190 individuals, submits these comments in response to the Notice of Inquiry (NOI) in the matter of usage of the public switched network by information service and Internet access providers.

**Summary:**

- APT agrees with the tentative conclusion reached by the Federal Communications Commission (FCC): "The current pricing structure should not be changed so long as the existing access charge system remains in place" (emphasis added).
- Access rules must be designed for, and accelerate the deployment of advanced facilities to the home that are capable of the high bandwidth, reliable transmission that is essential for the delivery of advanced services at affordable rates.
- APT's view is that whether or not there is, will be, or will not be network congestion is not the fundamental issue. What is fundamental is how to provide appropriate incentives for investment and innovation in the local network.

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<sup>1</sup> The Alliance was founded in 1986 and is a non-profit, tax-exempt membership organization with the charter to foster affordable access by all consumers to advanced telecommunications services. APT is governed by a Board of Directors. A list of the board and their affiliations is included in Attachment A.

- APT believes that wholesale customers should bear a significant share of the cost of a high bandwidth local infrastructure that will be necessary for the delivery of their products and services.
- The ISP exemption is a disincentive to investment and innovation in the local network.
- APT believes that access should no longer be priced based on the character of the service (e.g., interLATA, ESP, etc.) but rather on the demand for infrastructure and bandwidth that the service places on the network.
- APT does not favor application of IXC access charges to ISPs.
- APT believes that the Commission should establish interim access charges based on the lowest estimate of forward looking economic costs or fees based on the number of subscribers or other surrogate measures of demand for ISPs.
- Such charges or fees should encourage investment and innovation in the local network by moving ISPs from the voice network to new data networks.

## Introduction

APT concurs with the tentative conclusion reached by the Federal Communications Commission (FCC) on the question of whether or not Internet service providers (ISPs) should continue to be exempt from the payment of access charges for their use of the local telephone network. The Commission has concluded that, “the current pricing structure should not be changed so long as the existing access charge system remains in place” (emphasis added). There are economic inefficiencies embodied in the current pricing structure that should not be imposed on ISPs.

The Commission will soon adopt a report and order that will fundamentally change the existing access charge system. APT has submitted comments and reply

comments in the access charge proceeding.<sup>2</sup> We argued that access charge rules must be designed to provide incentives for, and to accelerate the deployment of advanced facilities to the home that are capable of the high bandwidth, reliable transmission that is essential for the delivery of advanced services at affordable rates. We do not underestimate the challenge that our position poses to the Commission; nor do we underestimate the societal benefits that would flow from the deployment of such a network.<sup>3</sup>

By issuing the NOI on the ISP issue and by reaching the tentative conclusion that it did, the Commission clearly recognizes that the preferential treatment afforded ISPs and other enhanced service providers may not be justified in an economically efficient or competitive access market.<sup>4</sup> APT agrees with this tentative conclusion and with the Commission's assertion that, "we must consider how our [access] rules can provide incentives for investment and innovation in the underlying networks that support the Internet and other information services."<sup>5</sup> The challenge for the Commission is to make sure that access to these advances is available and affordable for consumers in their homes.

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<sup>2</sup> See Comments of the Alliance for Public Technology, In the Matter of Access Charge Reform, CC Docket No. 92-262, and Reply Comments of the Alliance for Public Technology, In the Matter of Access Charge Reform, CC Docket No. 92-262.

<sup>3</sup> See Alliance for Public Technology, *Connecting Each to All*, (1993), and *Principles to Implement the Goal of Advanced Universal Service*, (1995).

<sup>4</sup> The Commission may also wish to consider how it would continue the ESP exemption in a manner that is consistent with the intent of the Telecommunications Act of 1996 to make explicit subsidies related to telecommunications services.

<sup>5</sup> NOI at par. 283.

## **I. The ISP Exemption Is a Barrier to Investment and Innovation**

Late last year, America Online (AOL) changed its pricing structure to allow subscribers unlimited access to the service for a flat rate price of \$19.95 per month.<sup>6</sup> Published reports suggest that demand soared and AOL subscribers frequently had a difficult time connecting with their local AOL dial-in office. AOL has since taken steps to address this access problem. They have invested \$350 million to add additional lines and support facilities. As a result, busy signals will become less frequent, and AOL subscribers will enjoy improved dial-up. Yet, nothing will have been done to spur investment and innovation in the underlying networks that support the Internet and other information services.

AOL made a rational business decision. The company purchased additional business lines from local telephone companies and new modems to build out its existing service. But its “rational” decision was driven, in part, by the ISP exemption,<sup>7</sup> which creates a financial disincentive to switch to the use of data networks where such networks are available. In this regard, AOL is no different from other ISPs, particularly those that offer Internet services to residential customers. ISPs can purchase business lines under the same local tariffs as other business customers. ISPs use these lines almost exclusively for incoming calls and, therefore, pay no usage sensitive tariff elements for outgoing calls as do most other businesses. As a result, ISPs pay less for using the local network than other businesses, even though they place, in most cases, greater demand for

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<sup>6</sup> America Online has other pricing plans as well. For example, America Online offers a \$4.95 per month light usage plan for up to three hours of service. Additional time is billed at \$2.50 per hour.

<sup>7</sup> And, in part, by the inability of America Online’s network to handle the surge in demand which led to consumer complaints, adverse publicity, and oversight by state attorneys general.

ports, switches, lines, and other elements on the network. ISPs have little incentive to move to other local network solutions, and local telephone companies, as a result, may not have the incentive to deploy them.

## **II. High-Speed Data Network Solutions Are Available But Not Widely Deployed**

APT has neither the data nor the expertise to determine whether or not there is a network congestion problem. The Commission notes that “[u]sage of interstate information services, and in particular the Internet and other interactive computer networks, has increased dramatically.”<sup>8</sup> Local telephone companies have issued reports warning of network congestion.<sup>9</sup> And, the Internet Access Coalition (IAC) has issued a report that claims there is no congestion.<sup>10</sup>

APT’s view is that whether or not there is, will be, or will not be network congestion is not the fundamental issue. What is fundamental is, as the FCC properly notes, how to provide appropriate incentives for investment and innovation in the local network.

A number of local telephone companies and telecommunications equipment manufacturers have developed network solutions that would route data traffic off the voice network and provide for faster and higher bandwidth transmissions. These network solutions are available today from companies such as Bell Atlantic, Nortel, Lucent, US

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<sup>8</sup> NOI at par 282.

<sup>9</sup> See, for example, Bell Atlantic, *Report of Bell Atlantic on Internet Traffic*, March 1996.

<sup>10</sup> Lee Selwyn and Joseph W. Laszio, *The Effect of Internet Use on the Nation’s Telephone Network*, Economics and Technology, Inc., Boston, Massachusetts, January 22, 1997. Prepared for the Internet Access Coalition.

West, and GTE under such names as Internet Protocol Routing Service (IPRS), digital subscriber line (xDSL), Internet/Intranet Transport Service (IITS), and CyberPop. What they have in common is the routing of data traffic off the voice network, use of data packets, higher speeds and, in some cases, higher bandwidth. But these new technologies are not being used by ISPs to deliver internet services to our homes.<sup>11</sup> Other network services are being deployed and used by ISPs for the provision of dedicated Internet access to large businesses and institutional clients.

### **III. Pricing ISP Access to Encourage Investment and Innovation in the Local Network**

In comments and reply comments in the access charge reform proceeding, APT urged the Commission to take several steps to encourage investment and innovation in the local network. Most prominent was APT's recommendation that "wholesale customers bear a significant share of the cost of a high bandwidth local infrastructure that will be necessary for the delivery of their products and services."<sup>12</sup> Specifically, APT recommended that the Commission (1) replace the carrier common line and subscriber line charges with a common facilities charge imposed on all telecommunications carriers who use the local network to deliver services, and (2) move from a minute of use system to a hybrid system that accounts both for level of use (number of ports, customers, etc.) and intensity of use (e.g., bandwidth demanded).<sup>13</sup>

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<sup>11</sup> Free or, in this case, subsidized access enjoyed by ISPs serves as a disincentive to the deployment and use of higher quality, higher speed, and higher bandwidth networks that reach the home.

<sup>12</sup> Comments of the Alliance for Public Technology at 4.

<sup>13</sup> Comments of the Alliance for Public Technology at 5.

APT argued, in effect, that access should no longer be priced based on the character of the service (e.g., interLATA, ESP, etc.), but rather on the demand for infrastructure and bandwidth that the service places on the network.

APT prefers that access charges be set by a competitive market. We encouraged the Commission, however, to adopt interim pricing rules for local access for interexchange carriers (IXCs) that would be implemented over the period of transition to a competitive markets; rules that would not drive up local telephone rates; and rules that will encourage investment and innovation in the local network. While APT does not favor application of the interim rules adopted for IXCs to ISPs, APT believes that the Commission should establish interim access charges or fees for ISPs. Such rules should encourage investment and innovation in the local network by moving ISPs from the voice network to new data networks.

Today, many ISPs connect to the local network by purchasing multiple business lines from a local telephone company's central office. In many states, tariffs for these lines include a flat fee plus a usage sensitive charge for outgoing calls. There is no usage sensitive charge for incoming calls. ISPs, therefore, are paying far less for a business line than other local businesses. Not only that, but the usage of an ISP's line, i.e., how long lines are open and tying up switching, transport and other local facilities, is often far greater than for a typical business line.

Until such time as access prices are economically efficient, taking into account cost, profit and capital needs for investment and innovation in the local network, the FCC should establish interim access charges or fees for ISPs. Such interim charges or fees

would be significantly less than access charges paid by IXC's during the transition period. The Commission should consider adopting access charges for ISPs based on the lowest estimate of forward looking economic costs of access service,<sup>14</sup> or, alternatively, fees based on the number of subscribers or other surrogate measures of demand.

ISPs may argue that rates paid by consumers will go up if interim access charges or fees are adopted. They will also allege that the imposition of interim access charges or fees could signal the end of flat rate pricing plans. APT believes that these are debatable points for several reasons. First, there currently exists a wide variation in the prices charged by ISPs for service to individual consumers,<sup>15</sup> and new economic models are emerging that can drastically reduce, if not eliminate, consumer charges.<sup>16</sup> Second, APT notes that the largest ISP in the nation -- AOL -- only recently went to flat rate pricing and still has metered plans.<sup>17</sup> **Third, and most importantly, APT believes that the imposition of interim ISP access charges or fees will provide incentives to move ISP traffic off of the voice network and on to data networks where new pricing models based on bandwidth and other measures of demand will replace per minute on other charges.**

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<sup>14</sup> In a statement to the Senate Committee on Commerce, Science and Transportation, FCC Chairman Reed Hundt notes that there is wide disagreement within the telephone industry on the forward looking economic costs of access service. Estimates range from .4 cents to 1.2 cents per minute. In the interconnection proceeding, the Commission established a rate of .3 cents per minute for terminating access for a call placed by a customer or a competitive local exchange carrier.

<sup>15</sup> For example, America Online offers a flat rate of \$19.95 per month. The rate drops to \$14.95 per month for customers who are willing to pay for two years in advance. Erol's and Tidal Wave Communications Inc., offer Internet service for \$9.50 per month for those willing to pay in advance. And, GTE offers a \$2 per month discount -- from \$19.95 to \$17.95 -- on Internet service to its long distance customers.

<sup>16</sup> The advent of free, advertiser-supported e-mail and Internet service is discussed in, Connie Guglielmo's, *Services Offer Free Ticket to Ride*, *Inter@ctive Week*, January 13, 1997.

<sup>17</sup> see fn 6.



**Conclusion:**

APT supports the Commission's tentative conclusion regarding the application of the current access charge system to ISPs. APT believes, however, that the current ISP exemption discourages investment and innovation in the local telephone network. The ISP exemption is also inconsistent with APT's fundamental position that all users should contribute to the maintenance and upgrade of the network based upon the demands that they place on the network. The ISP exemption may have served its purpose when it was first adopted. But it can no longer be supported as the Commission moves to reform access charges and as the access market becomes increasingly competitive.

The Commission is also sensitive to these concerns noting in the NOI that "it is extremely likely that, had per minute interstate access rates applied to ESPs over the last 13 years, the Internet and other information services would not have developed to the extent they have today -- and indeed may not have developed commercially at all."<sup>18</sup> APT concurs. The phenomenal growth of the Internet is, in part, attributable to the ISP exemption from access charge rates imposed on the IXC's. We are less sanguine, however, that the Internet's growth will be stunted if modest access charges or fees based on measures of demand placed on the local network are imposed on ISPs in the future. To the contrary, consumers will have access to higher-speed, higher-bandwidth networks if the Commission acts to remove disincentives to the deployment and use of such

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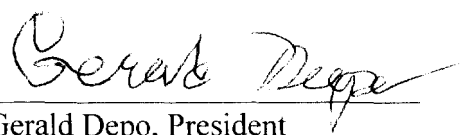
<sup>18</sup> NOI at par. 285.

networks. Revisiting and revising the ISP exemption is an important step in that process.

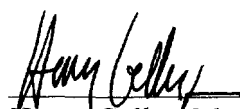
Respectfully submitted,

A handwritten signature in cursive script, reading "Dr. Barbara O'Connor", written over a horizontal line.

Dr. Barbara O'Connor, Chair

A handwritten signature in cursive script, reading "Gerald Depo", written over a horizontal line.

Gerald Depo, President

A handwritten signature in cursive script, reading "Henry Geller", written over a horizontal line.

Henry Geller, Member  
Board of Directors

March 24, 1997

## **Alliance for Public Technology Board of Directors**

**Richard José Bela** is President of the Hispanic Association on Corporate Responsibility (HACR) and Co-chair of the National Latino Telecommunications Task Force. Mr. Bela began his career as a lawyer in Washington, DC by working on President Johnson's "War on Poverty," fostering community-based economic development programs. After leaving government in 1971, he continued these efforts in a variety of private ventures in real estate, investment banking and management consulting. In 1986, Mr. Bela played a principal role in the formation of television station KRRT in San Antonio, Texas. He has served on several national boards including the MALDEF, and is the permanent Co-chair of the Hispanic Heritage Awards. He also served as an official US election observer in El Salvador in 1991. Mr. Bela received his Bachelors and law degree from the University of Texas.

**Jennings Bryant** is Professor of Communications and Director of the Institute for Communication Research (ICR) at the University of Alabama. He is currently serving as Chair of the State of Alabama's Information Age Task Force. Throughout his career, Dr. Bryant's main focus has been in the area of telecommunications processes and technologies. He received his B.A. in history from Davidson College, his master's degree in communication and theology from Louisville Presbyterian Theological Seminary, and his Ph.D in mass communications from Indiana University.

**René Cárdenas**, who holds the office of APT's Secretary, is an educational policy consultant working primarily with higher education programs and community-based organizations. He has been involved with educational program evaluation and economic development issues throughout his career. Dr. Cárdenas previously served as Senior Vice President of the National Council of La Raza, with responsibility for Technical Assistance and Constituency Support (TACS), including NCLR's Affiliate Network, Program Offices, and various Technical Assistance Projects. He is a former Senior Program Officer with the Fund for the Improvement of Post Secondary Education (FIPSE) and former Regional Director for Latin America with the Community Development Foundation. Dr. Cárdenas received a B.A. degree from the University of Texas at Austin and an Ed.D from Columbia University.

**Gerald Depo** serves as the President of the Alliance for Public Technology. He is town administrator for the Town of Bloomsburg, a university community in north central Pennsylvania. As such, he has implemented a comprehensive telecommunications plan which includes the Bloomsburg-Shigaraki Network (a people-to-people computer linkage with Japan). Mr. Depo completed his B.A. in political science at Bloomsburg State College, Bloomsburg, PA, and his Masters of Public Administration degree at Temple University, Philadelphia, PA. He is the Pennsylvania State Coordinator for Sister Cities International and serves on the Environmental Technology Board for the Pennsylvania Department of Commerce.

**Henry Geller** is the former director of the Washington Center for Public Policy. He has served as General Counsel of the Federal Communications Commission, Assistant Secretary of Commerce for Communications and Information Administration, and Administrator of the National Telecommunications and Information Administration. He currently is a communications fellow of the Markle Foundation and an adjunct professor at George Washington University.

**Mary Gardiner Jones** serves as the Chair of the Alliance for Public Technology's Public Policy Committee, having recently completed a six-year term as its President. She is also President of the nonprofit Consumer Interest Research Institute. Ms. Jones was appointed by President Lyndon Johnson as a Federal Trade Commissioner and served on the President's Advisory Panel on Antitrust. Ms. Jones was Vice President, Western Union Telegraph Company, Consumer Affairs. She continues to specialize, on behalf of seniors and consumers, in information and communications technology.

**Ruth Jordan** is the Director of Public Relations of The George Washington University Medical Center in Washington, DC. In addition to serving on the APT Board, she is a member of the Board of Directors of the National Consumers League. She is also a member of the District of Columbia Democratic State Committee and speaks and writes on health care, telemedicine and education reform issues.

**Mark Lloyd** is a communications attorney who specializes in nonprofit clients. He serves as Director and General Counsel for the Benton Foundation, Director and Chair of the Telecommunications Task Force of IONA Senior Services, and Director of the Sasha Bruce Youthwork. From 1992 to 1994, Mr. Lloyd served as a consultant to the John D. and Katherine T. MacArthur Foundation, providing advice on funding public broadcasters and analysis of communications policy issues.

**Barbara O'Connor** is the Chairperson of the Alliance for Public Technology. She currently serves as Professor of Communications and the Director of the Institute for the Study of Politics and Media at California State University, Sacramento. Dr. O'Connor was appointed by the California State Legislature as the chairperson of the State Education Technology Committee. She was also chair of the Pacific Telesis Intelligent Network Task Force Committee. In 1992, Dr. O'Connor was appointed to the Federal Communications Commission's Network Reliability Council, the Congressional Office of Technology Assessment's Study on International Networks, and the Bellcore Advisory Council.

**Paul Schroeder** is the Director of the American Foundation for the Blind's midwest office in Chicago. He began working with AFB in 1994 as their National Program Associate in Telecommunications and Technology, and he continues to focus on those issues in his current position. He coordinates technology initiatives for AFB, and consults on technology policy with many government agencies, private companies, and nonprofit organizations. Prior to joining AFB, he served for three years as Director of Governmental Affairs for the American Council of the Blind in Washington, DC. He was instrumental in crafting the "disability amendment" that was included in the Telecommunications Act of 1996.

**Esther Shapiro** is the Director of the Consumer Affairs Department of the City of Detroit. The Department provides consumer education and information, and investigates consumer complaints. Ms. Shapiro is a past president of the Consumer Federation of America, a member of the board of directors of the National Consumers League, and a member of the National Association of Consumer Agency Administrators. She has served on numerous advisory boards, and she conducts seminars for teachers of consumer education. She currently writes a weekly column for the Detroit Free Press (although the column is being carried in an alternative weekly for the duration of the strike at the Detroit Free Press).

**Arthur Sheekey** serves as Treasurer of the Alliance for Public Technology. He is President of the Public Service Telecommunications Corporation, a nonprofit telecommunications consulting organization whose clients include international and domestic nonprofit public service organizations in the field of education, health care, government, and religious groups. Dr. Sheekey previously held numerous high-level positions in a number of federal agencies, serving most of his tenure as a Senior Educational Policy Analyst in the Office of the Assistant Secretary for Educational Research and Improvement at the U.S. Department of Education. He worked in the Office of Plans and Policy at the Federal Communications Commission, the White House Office of Science and Technology Policy, and Office of Management and Budget.

**Vincent Thomas** is an Economic Development Specialist with the Office of Assemblyman Albert Vann in the New York State Assembly. As such, he specializes in telecommunications issues and their impact on community economic development, including opportunities for minority and non-profit organizations, with a particular focus on strategic partnerships and socially responsible public policy. Mr. Thomas supports Assemblyman Vann's work as Chair of the New York Assembly's Committee on Corporations, Authorities and Commissions, and as Chair of the Telecommunications and Energy Committee of the National Black Caucus of State Legislators. Mr. Thomas formerly served as the Telecommunications Policy Analyst for the New York State Department of Economic Development—Governor's Telecommunications Exchange, which developed recommendations for a comprehensive state telecommunications policy and strategy. Mr. Thomas received his B.A. from Brown University in Economics and Communications and attended Antioch School of Law.

**Donald Vial** is a Senior Advisor with the California Foundation on the Environment and the Economy. Mr. Vial's previous positions include: Commissioner, California Fair Political Practices Commission; Research and Education Director, California AFL-CIO; Chairman, Center for Labor Research and Education, University of California, Berkeley; and Director of the Industrial Relations Department for the State of California. From 1975-82, he was a member of the Governor's Cabinet, and from 1983-87 he served on the California Public Utilities Commission as Commissioner and then President. He is also Past President of the Association of California Consumers, and a member of the Boards of Directors of the Industrial Relations Research Association, KQED Public TV, and the Northern California ACLU. Mr. Vial received a Masters degree in Economics at the University of California, Berkeley.